

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
BRIEF &  
APPENDIX**





# 75-1414

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P/S

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-against-

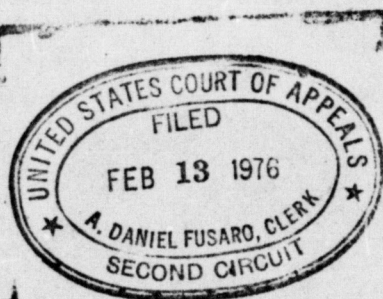
ISAAC WILLIAMS,

Defendant-Appellant.

Docket No. 75-1414

APPENDIX TO THE BRIEF  
FOR APPELLANT

ON APPEAL FROM A JUDGMENT  
OF THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK



WILLIAM J. GALLAGHER, ESQ.,  
THE LEGAL AID SOCIETY,  
Attorney for Appellant  
ISAAC WILLIAMS  
FEDERAL DEFENDER SERVICES UNIT  
509 United States Court House  
Foley Square  
New York, New York 10007  
(212) 732-2971

JONATHAN J. SILBERMANN,  
Of Counsel.

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CRIMINAL DOCKET  
UNITED STATES DISTRICT ( RT

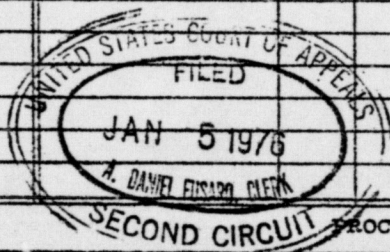
FILED 12/12/75

5 CRIM. 85

D. C. Form No. 100 Rev.

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.:
vs.	Michael Q. Carrey, AUSA
ISSAC WILLIAMS	791-1934
	For Defendant:

05) STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed	Clerk				
J.S. 3 mailed ✓	Marshal				
Violation	Docket fee				
Title 18					
Sec. 1341					
11 fraud.					
(Eighteen Counts)					



DATE	PROCEEDINGS
-24-75	Filed indictment.
2-3-75	Deft. present (Atty. present) enters a plea of not guilty, 10 days for motions. Bail fixed by the Magistrate continued, (\$10,000 P.R.B.) Frankel, J. Case assigned to Bonsal, J. for all purposes.
7/75	Filed papers orig. filed with Magistrate Raby: (1) docket entry sheet, (2) criminal complaint, (3) Magistrate's arrest warrant, SDNY (4) disposition sheet (5) appointment of counsel (6) appearance bond.
-12-75	Case called (attys. present) no appearance by deft. Bench warrant ordered. Bonsal, J.
-13-75	Bench warrant issued.
9-03-75	Case called for trial. No appearance by deft. Bench warrant ordered. Bail forfeited on Govt.'s motion. Bonsal, J.
16-75	Bail reinstated. Order for bail forfeiture revoked. Bonsal, J.

DATE	PROCEEDINGS
09-19-75	Filed warrant for arrest of Issac Williams and return, warrant returned unexecuted.
10-23-75	Jury empanalled trial begun. Bonsal, J.
10-24-75	Trial cont'd.
10-28-75	Trial cont'd. Deft. found guilty oncts. 1-18. Pre-sentence report ordered. 12-8-75 set for sentence. Bail cont'd. Bonsal, J.
12-09-75	I. Williams-filed Unsecured Personal Recogniaance Bond pending appeal in the sum of \$20,000.
12-08-75	ISAAC WILLIAMS (atty. present) Filed JUDGMENT- Eighteen (18) MONTHS on each of counts 1 thru 18, incl. to run conc. with each other. Bail pending appeal filed in the amount of \$20,000. P.R.B. to be posted by 12-9-75 at 4PM. Bonsal, J. issued all copies
12-12-75	Filed deft.'s notice of appeal from judgment of 12-8-75. Mailed copies to U.S. Atty. & Deft.
12-15-75	Filed Govt.'s requests to charge.

A TRUE COPY

RAYMOND F. BURCHARDT, Clerk

By

*E. Becken*

Deputy Clerk

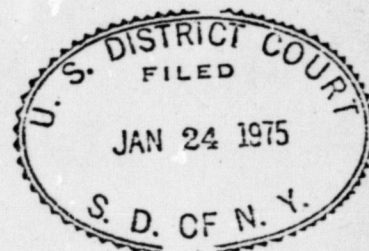
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QC:nc  
-736

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA,

- v -

ISSAC WILLIAMS,

Defendant.

:

:

:

:

INDICTMENT

74 Cr.

**75 CRIM. 85**

The Grand Jury charges:

1. From on or about the 1st day of May, 1973, up to and including June, 1974, in the Southern District of New York and elsewhere, ISSAC WILLIAMS, the defendant, unlawfully, wilfully and knowingly did devise a scheme and artifice to defraud certain department stores and other commercial establishments (hereinafter referred to as the "parties to be defrauded") and to obtain money and property from the parties to be defrauded by means of false and fraudulent pretenses, representations and promises.

2. It was a part of said scheme and artifice that ISSAC WILLIAMS, the defendant, would and did open checking account No. 2-9469, at Bankers Trust, Hudson Valley, N.A., Monteco East Plaza, Monticello, New York and would deposit in such account less money than the total amount of the checks drawn on it.

JAN 27 1975

11CROFIL

3. It was further a part of said scheme and artifice that ISSAC WILLIAMS, the defendant, would order goods by mail from Macy's, Herald Square, New York, New York, enclosing with each order, in payment therefor, a check drawn by him on the account identified in paragraph two above, which account had funds insufficient to cover the checks.

4. On or about the dates hereinafter set forth, in Counts One through Eighteen, in the Southern District of New York and elsewhere, ISSAC WILLIAMS, the defendant, unlawfully, wilfully and knowingly, and for the purpose of executing the



scheme and artifice set forth in paragraphs 1 through 3 above and attempting to do so, did place and cause to be placed in post offices and authorized depositories for mail matter, to be sent and delivered by the United States Postal Service, certain matters and things, to wit, letters containing orders for goods, personal checks and other matter, addressed to Macy's, Herald Square, New York, New York and identified as hereinafter set forth:

COUNTS ONE THROUGH EIGHTEEN

<u>COUNT</u>	<u>ON OR ABOUT DATE MAILED</u>	<u>ADDRESSEE</u>	<u>ARTICLE MAILED: CHECK NO.</u>	<u>AMOUNT OF CHECK ORDER</u>	<u>UNPAID CHARGES</u>
1	10/14/73	Macy's	210	\$105.93	\$105.93
2	10/14/73	Macy's	211	209.06	209.06
3	10/14/73	Macy's	212	324.50	(nothing shipped)
4	10/14/73	Macy's	213	53.50	53.00
5	10/14/73	Macy's	214	171.17	171.17
6	10/14/73	Macy's	215	52.40	53.16
7	10/14/73	Macy's	216	66.24	67.37
8	10/14/73	Macy's	217	62.00	61.42
9	10/14/73	Macy's	218	70.62	70.43
10	10/15/73	Macy's	219	44.90	44.48
11	10/15/73	Macy's	220	36.36	36.59
12	10/15/73	Macy's	223	74.88	75.43
13	11/7/73	Macy's	225	29.64	29.64
14	11/25/73	Macy's	260	74.20	74.20
15	11/25/73	Macy's	268	92.92	92.87
16	12/15/73	Macy's	274	170.70	(nothing shipped)
17	12/15/73	Macy's	295	339.16	(nothing shipped)
18	12/15/73	Macy's	299	73.33	(nothing shipped)

Amos Paul  
FOREMAN

Paul J. Curran  
PAUL J. CURRAN  
United States Attorney



75 CRIM. 85

Form No. USA-32a-271 (Ed. 9-23-58)

United States District Court

SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

ISSAC WILLIAMS,

Defendant.

INDICTMENT

18USC§1341

PAUL J. CURRAN

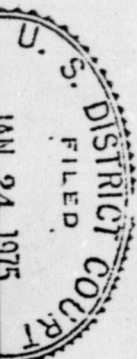
United States Attorney

A TRUE BILL

*Donald Paul*

Foreman

SP-68-1-13-70-20M-4025



JUDGE DONALD

2/3/75. Defendant (Att'y M. Magruder) Def. ex  
a plea of 1/2. Case assigned to Donald J.  
10. days for motion. Def. Bail granted.  
pre filed by Mag. Court.

8/12/75 Case called (Att'y Green) *Frankly.*  
No appearance by defendant. Bench  
warrant ordered. *Donald*

Sep. *Q*  
4/23 1975 CASE CALLED FOR TRIAL  
d NO APPEARANCE BY DEF. BENCH WARRANT  
ORDERED, BAIL FORFEITED. ON GOV MOTION  
BENCH WARRANT

SEP. 16, 1975. BAIL REINSTATED. ORDER FOR  
BAIL FORFEITURE REINSTATED  
BENCH WARRANT.

OCT 23 1975 JURY EMpaneled TRIAL SET FOR  
OCT 24 1975 TRIAL COURT BENCH WARRANT  
OCT 28 1975 TRIAL COURT; SUMMONS BY GOV  
COURT BY THE COURT, NARRATIVES SUB ORIN  
JURY VERDICT DEF. GUILTY 1-18. TRIAL BENCH WARRANT

United States District Court

SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

ISSAC WILLIAMS,

Defendant.

INDICTMENT

18USC§1341

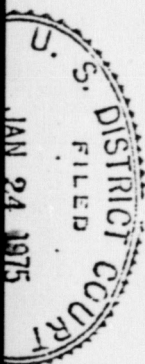
PAUL J. CURRAN

A. TRUE BILL

United States Attorney

Foreman

FPI-SJ-1-13-70-2011-1075



1975 SENTENCE ISSAC WILLIAMS (ATTY J. LIPSON LEGAL A  
SENT) CTI-18. COMMITTED TO CUSTODY OF ATTY. GEN FOR  
PRISONMENT FOR 18 MONTHS. ON EACH COUNT 1-18 TO ADJ  
CONCURRENTLY. ADVISED OF RIGHT TO APPEAL  
\$6,000 PRB To be posted by 4PM 12/9

A TRUE COPY  
RAYMOND F. BURGHARDT, Clerk

By Ed Becker  
Deputy Clerk



## THE CHARGE OF THE COURT

J. Bonsal

THE CLERK: The Court will now charge the jury.  
Will you lock the door, please, Marshal.

THE COURT: Mr. Foreman, and you are by virtue  
of occupying the first chair, ladies and gentlemen of  
the jury:

First of all, I would like to thank each of  
you for the care and attention which you have shown  
throughout this trial and to express my appreciation to  
each of you for the sacrifices I know each of you has had  
to make in your own personal lives so you could serve  
in this very important capacity, being on a federal jury.

I know you served a day beyond your term and  
if any of you have any problems with your employer by  
reason of that, I would be grateful if you let my chambers  
know and I will be glad to straighten it out.

I am sure that you will give me the same degree  
of attention which you have shown throughout the trial  
so that you may understand the principles of law which  
apply to this case.

Remember I told you when we started that it  
was your duty here to weigh the evidence calmly and  
dispassionately without any sympathy or prejudice for or

against the Government or this defendant, Mr. Williams.

I told you that everyone appearing before this bar of justice is entitled to a fair and impartial trial regardless of his occupation or station in life.

I told you that your verdict here must be based solely on the testimony which you heard from that witness chair and on the exhibits which were received in evidence and on nothing else at all.

Then I told you that it was my duty to instruct you as to the law which applies here and you must accept my instructions as to the law, but you, the jury, are the sole judges of the facts.

It is not what a lawyer says a witness testified to nor what a document contains or shows or what it might contain on these subjects; it is what you, the jury, remember and decide.

Well, I also told you during the trial I would have conversations with one or the other of the lawyers, and indeed I did. I told you at that time to please pay no attention to those conversations.

Above, all, ladies and gentlemen, please draw no inferences from anything I may have said during this trial that I favor one side or the other here, because, of course, I do not. That is not my province. It is yours.



1  
2 Now, throughout my charge, ladies and gentlemen,  
3 I will instruct you that you may not convict this defend-  
4 ant, Mr. Williams, unless and until you are satisfied  
5 that the Government has proven each element comprising  
6 the crimes charged beyond a reasonable doubt.

7 What do we mean by beyond a reasonable doubt?  
8 Well, of course the words suggest the answer. It is a  
9 doubt based on reason. It is a doubt which a reasonable  
10 man or woman might entertain. But a reasonable doubt is  
11 not a fanciful doubt, it is not an imagined doubt, it  
12 is not a doubt that a juror might conjure up in order to  
13 avoid performing an unpleasant task; it is a reasonable  
14 doubt. It is a doubt which arises in a juror's mind  
15 because of something in the evidence in the case or lack  
16 of evidence. It is the kind of doubt which would cause  
17 a reasonable man or woman in a more serious and important  
18 matter in his or her life to hesitate to act and the  
19 burden is on the Government to prove the guilt of this de-  
20 fendant beyond a reasonable doubt.

21 Now, the Government need not prove the defend-  
22 ant's guilt beyond all possible doubt, because if that  
23 were the rule, few people, however guilty they might be,  
24 would ever be convicted.

25 In this world of ours it is practically impossible

1  
2 for one to be absolutely and completely convinced of any  
3 controverted fact which by its nature is not susceptible  
4 to mathematical precision or to mathematical certainty,  
5 so the law requires that the Government prove the guilt  
6 of a defendant beyond a reasonable doubt, not beyond all  
7 possible doubt.

8 When I review the indictment with you, ladies  
9 and gentlemen, please remember, as I told you at the out-  
10 set, that the indictment is merely the way the Government  
11 brings into court individuals it claims have violated the  
12 law.

13 I told you that the indictment is not evidence  
14 of the guilt of the defendant and the indictment does not  
15 detract in any degree from the presumption of innocence  
16 with which the law surrounds this defendant, Mr. Williams,  
17 until his guilt is proven.

18 This presumption of innocence remains with  
19 Mr. Williams throughout the trial and applies to the  
20 consideration of each of the essential elements of the  
21 crimes charged, and this presumption of innocence remains,  
22 unless and until you, the jury, find that the Government  
23 has proved the guilt of the defendant beyond a reasonable  
24 doubt.

25 The defendant, Mr. Williams, has pled not guilty



1 here and by doing so he has put in issue every material  
2 allegation in the indictment, and as I have said, the  
3 Government must prove these elements beyond a reasonable  
4 doubt.  
5

6 The defendant is not required to put on witnesses  
7 in his defense if he doesn't want to. He is not required  
8 to do anything because as I mentioned to you, the burden  
9 is on the Government. The defendant is not required  
10 to establish his innocence.

11 If the Government has not proved to you that  
12 the defendant is guilty beyond a reasonable doubt, then of  
13 course you would find the defendant is not guilty.

14 Now this has been a short trial, ladies and  
15 gentlemen, and I don't intend to review all of the evidence  
16 with you. You have heard it this morning from the law-  
17 yers, and as I mentioned to you, it is not what they say  
18 or what I say; it is your recollection which controls.

19 It may help you in refreshing your own recollec-  
20 tions if I suggest some of the contentions as I understand  
21 them, but here again, pay no attention to what I do there  
22 either.

23 As I understand it, the Government here is con-  
24 tending that the defendant, Mr. Williams, devised a scheme  
25 to defraud various department stores by issuing checks

1  
2 which he knew were drawn on an account where there were  
3 insufficient funds to back up the checks.

4 The Government contends that Mr. Williams  
5 continued to issue checks on his account at the Bankers  
6 Trust in Monticello, New York, during the months of Oc-  
7 tober, November and December 1973, when he knew that there  
8 were not any funds there and he was notified by the bank  
9 that his account had been closed.

10 The Government further contends that in carry-  
11 ing out his scheme to defraud the department stores  
12 through this bank account, that Mr. Williams used the  
13 mails and I don't think there is any dispute that Mr.  
14 Williams used the mails in sending in the orders to the  
15 department stores with the checks.

16 Mr. Williams, the defendant, denies the Govern-  
17 ment's contentions. He denied that he devised a scheme  
18 to defraud any of these department stores. I think he  
19 concedes only that his bookkeeping may not have been of  
20 the best, but he contends that nobody ever told him,  
21 neither the bank nor the department stores, told him that  
22 his account had been closed and that he always thought he  
23 had sufficient funds.

24 You remember he testified, I think, that he  
25 had asked his wife to take the proceeds from the food stand



you remember, to the bank, and that also he asked her to take the money, cash I guess it was, from his winnings at the Roosevelt Raceway, \$4500 I sort of remember, and that she had told him that she had done so.

It was only much later, he said, that he found out that that money had not been put in his account, that it had been taken by some cousin, I think, who had gone down to Georgia.

Now the statute involved in this case, ladies and gentlemen, is Section 1341 of Title 18 of the United States Code, which is known as the Federal Mail Frauds statute.

The statute provides in relevant part, and there is a lot of verbiage in here, "Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations or promises for the purpose of executing such scheme or artifice or attempting so to do places in any post office or authorized depository for mail matter any matter or thing whatever to be sent or delivered by the postal service, or takes or receives therefrom any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or the place at which it is directed

1 to be delivered by the person to whom it is addressed  
2  
3 any such matter or thing, is guilty of a crime."

4 Now, all this means, ladies and gentlemen, is  
5 that if one devises a scheme to defraud and uses the mails  
6 in connection with that scheme, he is guilty of a crime  
7 under this statute.

8 Turning to the indictment, ladies and gentlemen,  
9 which I remind you again is merely the charge and not  
10 evidence, the indictment here reads as follows:

11 "The grand jury charges:

12 "1. From on or about the first day of May, 197  
13 up to and including June 1974, in the Southern District  
14 of New York and elsewhere" -- Macy's is in the Southern  
15 District of New York -- at least the main branch is as  
16 to which I think we heard testimony -- "Isaac Williams,  
17 the defendant, unlawfully, wilfully and knowingly did  
18 devise a scheme, an artifice to defraud certain department  
19 stores and other commercial establishments (hereinafter  
20 referred to as the parties to be defrauded) and to obtain  
21 money and property from the parties to be defrauded by  
22 means of false and fraudulent pretenses, representations  
23 and promises.

24 "2. It was part of said scheme and artifice  
25 that Isaac Williams, the defendant, would and did open



checking account No. 2-9469 at Bankers Trust, Hudson Valley NA, Monticello, New York, and would deposit in such account less money than the total amount of the checks drawn on it.

"3. It was further a part of said scheme and artifice that Isaac Williams, the defendant, would order goods by mail from Macy's, Herald Square, New York, New York, enclosing with each order in payment therefor a check drawn by him on the account identified at Paragraph 2 above, which account had funds insufficient to cover the checks.

"4. On or about the dates hereinafter set forth in counts 1 through 18, in the Southern District of New York and elsewhere, Isaac Williams, the defendant, unlawfully, wilfully and knowingly and for the purpose of executing the scheme and artifice set forth in Paragraphs 1 through 3 above and attempting to do so, did place and cause to be placed in post offices and authorized depositories for mail matter to be sent and delivered by the United States Postal Service certain matters and things, to wit, letters containing orders for goods, personal checks and other matter, addressed to Macy's, Herald Square, New York, New York, and identified hereinafter as set forth in counts 1 through 18," and then they

are all listed by the number of the count, the date, the mailing, the addressee, which is Macy's in every case, the check number and the amount, and I think finally there is a column of unpaid charges.

Now, these checks, as I understand it, ladies and gentlemen, are Exhibits 15 through 32.

I think as counsel indicated in their summation the Government contends that goods were shipped in all but four of these instances which are so indicated on the indictment.

I will hand you a copy of this indictment when you retire merely to keep track of the checks and the counts.

Remember, it is merely a statement of charges, it is not evidence whatsoever of the guilt of Mr. Williams.

Now, while under the law, ladies and gentlemen, you must consider these counts separately and return a separate verdict as to each count, the point is, and I think counsel has readily conceded, the real issue is: Was there a scheme to defraud? If there was a scheme to defraud and these checks were pursaunt to that scheme, that's one thing.

On the other hand, if there was no scheme to defraud, then, of course, you will find him not guilty on



all the counts.

Now, in order to find the defendant, Mr. Williams, guilty on any of these counts, ladies and gentlemen, the Government must prove beyond a reasonable doubts three elements: First, that Mr. Williams did devise a scheme or artifice to defraud or to obtain goods or money by means of false or fraudulent representations or promises. That, as I mentioned, is the crucial issue here.

2. That in carrying out the scheme the defendant either used the mails himself or caused others to use the mails. I don't think there is any question about that. I think that Mr. Lipson conceded that mails had been used here and obviously they were.

The third element is that the defendant acted wilfully, knowingly and unlawfully. That is the other crucial element in this case.

Going back to the first element, the Government must prove that the defendant devised a scheme or artifice to defraud.

Now, what is a scheme? A scheme is merely a plan, that's all it is, a plan worked out, an arrangement to accomplish an unlawful purpose.

To defraud, a scheme to defraud. What does defraud mean? Defraud means that the purpose of the

rq:rq

scheme was to cheat someone; such as buying goods that you don't want to pay for, that's cheating somebody, that's a fraud.

So here the Government must prove that the defendant did devise a scheme to defraud, to obtain goods by means of false or fraudulent pretenses, representations or promises.

As I understand it the Government is contending that here the defendant issued these checks to the department stores knowing that there were insufficient funds in his checking account for the purpose of obtaining the goods which he ordered.

Now, the defendant denies this. Of course he says he didn't know this and as I recall his testimony he said he was ordering things for Christmas for his children.

The defendant also testified, and I think I reviewed that with you, that he thought at all times he had enough money in the bank to pay those checks and I told you about his instructions to his wife about the money from the food stand and about the money he said he won at the Roosevelt Racetrack.

Finally I think the defendant contends that he didn't know that his bank account had been closed until



1  
2 some time after his arrest by the Post Office authorities  
3 in January of 1974.

4 Here ladies and gentlemen, you must  
5 review these contentions. Of course if you find that  
6 the defendant did act in good faith and he did not devise  
7 a plan or scheme to defraud, then you would find him  
8 not guilty.

9 On the other hand, if after reviewing the  
10 evidence you find that he did devise such a plan or scheme,  
11 then you are to consider the remaining elements I mentioned  
12 to you, the second one being the use of the mails and  
13 as to that, I don't think there is any problem, nor is there  
14 any issue as to whether Mr. Williams signed the checks.

15 I think the parties stipulated he did sign  
16 all these checks that are mentioned in the indictment.

17 Now, the third element, and this again is an  
18 important one, is that the Government must prove beyond  
19 a reasonable doubt Mr. Williams was acting wilfully,  
20 knowingly and unlawfully when he issued these checks;  
21 that he did it with the purpose of cheating Macy's out  
22 of this merchandise.

23 How do you determine the defendant's knowledge  
24 and intent? How do you determine whether he had the  
25 criminal intent here, that he was seeking to defraud

2 Macy's pursuant to this scheme?

3 Well, of course, an act is done knowingly  
4 and wilfully if it is done voluntarily and purposefully.  
5 An act can be done wilfully and knowingly if it is done  
6 recklessly, in disregard of the law, such as if you should  
7 find a conscious purpose in not complying with the law,  
8 And an act is done wilfully, knowingly and unlawfully if  
9 it is done with an evil motive or purpose, but an act is  
10 not done wilfully, knowingly and unlawfully if it is done  
11 by mistake, done by carelessness or done by other innocent  
12 reason.

13 Now, obviously we can't look into Mr. Williams'  
14 mind to determine what his intentions were on these oc-  
15 casions. You can't look into his mind to see what  
16 knowledge he had at the time to determine his specific  
17 intentions, but these are matters which you, the jury,  
18 must determine or make careful consideration of the  
19 facts and circumstances which were brought out during  
20 the trial.

21 The knowledge and intentions, the wilfulness,  
22 if you will, of the defendant, may only be understood  
23 when put in the context of the circumstances surrounding  
24 his acts and the reasonable inferences which you, the jury,  
25 find may be drawn from them.



1  
2           You might ask yourselves whether you believe  
3 these transactions were normal or abnormal; whether you  
4 think the background of the defendant made it likely  
5 or unlikely that he understood what he was doing; whether  
6 you think the defendant had a motive; whether you think  
7 he had a financial interest in carrying this out.

8           These are the kinds of questions, ladies and  
9 gentlemen, and of course not the only ones, that you  
10 should ask yourselves in order to determine Mr. Williams'  
11 knowledge and intentions on these occasions.

12           Of course, I don't suggest any answers to these  
13 questions because after all in your own daily affairs  
14 you are continually called upon to use your own common  
15 sense and experience to determine from the actions or  
16 statements of others what their real intentions and  
17 purposes are.

18           Please do exactly the same thing here.

19           You will recall there was testimony during  
20 the trial via people from Macy's, Gimbels and Abraham &  
21 Straus concerning some other checks which were sent out  
22 around this period with orders on those stores.

23           Now this indictment does not charge any viola-  
24 tions of the law with respect to the checks in these  
25 other department stores. The only reason I allowed

this evidence in, ladies and gentlemen, is so that you could determine Mr. Williams' knowledge and intentions at the time of the checks which are covered by the indictment. It is only for that period that I let that evidence in.

In considering the evidence here, ladies and gentlemen, bear in mind that the law recognizes two types of evidence: direct evidence and circumstantial evidence.

Direct evidence is the testimony of a witness who testifies as to what he did or what he saw.

Circumstantial evidence consists of circumstances from which the jury may infer by a process of reason certain facts which are sought to be established as true.

For example, circumstantial evidence is when you come into your apartment and your coat and hat are wet and somebody is in there watching television and they say to you, "It is raining outside." They haven't looked outside, they looked at you. You have a wet coat and hat and by a process of reasoning they say it is raining outside. That's circumstantial evidence that it is raining.

Well, there is circumstantial evidence here in connection with all these documents which were received during the trial and both direct and circumstantial evidence are good evidence and no greater certainty is required



2 when it is circumstantial, but in any event the Government  
3 must prove the guilt of the defendant beyond a reasonable  
4 doubt.

5 The Government may ask you to draw one set of  
6 inferences while the defendant asks you to draw another,  
7 but it is for you, the jury, alone, to decide what in-  
8 ferences you will draw from the evidence and what facts  
9 you find to have been proven.

10 Remember, these inferences must be reasonable  
11 inferences based on the evidence or lack of evidence.  
12 Please don't base inferences on speculation.

13 Now you, the jury, of course, are the exclusive  
14 judges of the credibility of the several witnesses who  
15 appeared before you. How do you determine credibility?

16 Well, of course you subject the testimony of  
17 all witnesses to the same standards whether they are Gov-  
18 ernment witnesses or defense witnesses. It is not the  
19 number of witnesses, it is the quality of the testimony,  
20 not the quantity of the testimony which you, the jury, most  
21 likely think represented a true picture of what happened.

22 So in considering the credibility of these wit-  
23 nesses, ladies and gentlemen, again use your everyday  
24 common sense.

25 How did they impress you? Did you think they were

2 testifying frankly, candidly and fairly?

3 So here again apply your common sense and ex-  
4 perience just as you do when you are called upon to deter-  
5 mine an important matter in your own lives when you have  
6 to decide whether you have been given a true picture of  
7 a given situation.

8 You would consider, I think, a witness' demeanor,  
9 you would take into account his background, his occupation,  
10 his business, his prior criminal record, if any. You  
11 would consider a witness' candor, or lack of it, a wit-  
12 ness' possible bias, his means of information and the ac-  
13 curacy of his recollection and you would consider whether  
14 you think a witness' testimony is supported or whether  
15 you think it is contradicted by other credible testimony  
16 or circumstances.

17 You would consider whether a witness has an  
18 interest in the case, an interest to be served in testify-  
19 ing.

20 An example is Inspector Kelleher  
21 of the Post Office Department. Well, he is a law enforce-  
22 ment officer. He has an interest in prosecuting people  
23 whom he thinks have violated the law. Well, that's an  
24 interest you can consider.

25 Then, of course, Mr. Williams testified. He is



1 the defendant in this case. He didn't have to. He testi-  
2 fied voluntarily. But manifestly, he has a very impor-  
3 tant interest in this case. Of course, this doesn't  
4 mean that a witness will change his story or color it or  
5 withhold anything because he has an interest. It is merely  
6 a factor for you, the jury, to consider in connection with  
7 his testimony.  
8

9 Then, as I recall it, there was some evidence  
10 during the trial-- I think Mr. Williams testified that  
11 back in 1966, it is almost ten years ago-- that he pled  
12 guilty to petty larceny, something with TVs or something  
13 like that in the New York courts.

14 Now here you consider that testimony not to de-  
15 termine whether he committed the crimes here charged, but  
16 you may consider it and consider it only in considering  
17 Mr. Williams' credibility. You can consider it in con-  
18 nection with that and for no other purpose.

19 A witness may be discredited or impeached by  
20 contradictory evidence and if you think that a witness  
21 has been impeached and discredited, you can give that  
22 testimony of that witness such credibility as you think it  
23 deserves. If you think a witness is lying to you, you  
24 can disregard all his testimony or you can accept part  
25 of it if you find it reliable and you may disregard the rest.

Now, I think I mentioned to you already that in these 18 counts a separate crime is charged in each count, so you must consider them separately and of course the fact you may find the defendant guilty or not guilty on one count, does not control your verdict on the remaining counts.

Of course, you have the right to see any or all of these exhibits which have been received during the trial. If you want to see any of these exhibits, Mr. Foreman, just let the marshal know and they will be made available to you.

Remember also, ladies and gentlemen, that a jury deliberation is one in which everyone participates, expresses views, exchanges views. Please don't be afraid of changing your original view if after discussing it with your fellow jurors you become convinced that your original view was wrong, but, on the other hand, never surrender your honest conviction in the case. Never surrender that, and certainly don't surrender it because other jurors may disagree with you or you may be outvoted. Never surrender your own honest convictions and you will seek to arrive at a verdict here if you can do so reasonably and consistently with the conscientious convictions of each and every one of you.



Now, it is obviously extremely important both to the Government and to the defendant Mr. Williams that this case be decided by you. This being a criminal case, your verdict must be unanimous. It is a verdict which reflects the conscientious conviction of each of you.

If after reviewing all of the evidence here, ladies and gentlemen, you find that the defendant is not guilty, please do not hesitate for any reason to return a verdict of not guilty. but, on the other hand, if you find that the law has been violated as charged, you must not hesitate to render a verdict of guilty because of sympathy or any other reason at all.

Please don't consider the question of possible punishment if you find the defendant is guilty. Please don't let this enter into your deliberations in any way.

The duty of imposing sentence rests on the Court and you must not allow consideration of punishment to affect you or seek to make you avoid performance of an unpleasant task.

Finally, ladies and gentlemen, I am sure if you listen to the views of your fellow jurors and if you apply your common sense here you will reach a fair verdict.

Remember that that verdict must be rendered without fear, without favor, without prejudice and without

1        rcmq  
2        sympathy.

3                Will counsel come forward, please.

4                (At the side bar)

5        MR. LIPSON: I have no objections.

6        THE COURT: All right.

7                How about you?

8        MR. POTTER: No.

9        THE COURT: All right. Thank you very much.

10               (In open court)

11               (Alternate jurors excused)

12               (Marshal duly sworn)

13        THE COURT: This is a copy of the indictment,  
14        Mr. Foreman, and I will ask Mr. Wallace to mark this as  
15        a Court exhibit and to hand it to you.

16               Remember, the indictment is merely the charge  
17        and you will render a separate verdict on each of these  
18        18 counts and your verdict will be either guilty or not  
19        guilty.

20               (Indictment marked Court Exhibit 1)

21        THE COURT: I hope, ladies and gentlemen, that  
22        your sandwiches will be arriving very shortly. I have to  
23        be out of the courthouse from about 12:45 to about 1:45  
24        and I thought I better mention that to you.

25               Thank you very much.



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rg:mg

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(At 11:56 a.m. the jury retired to the jury

3

room to deliberate upon a verdict)



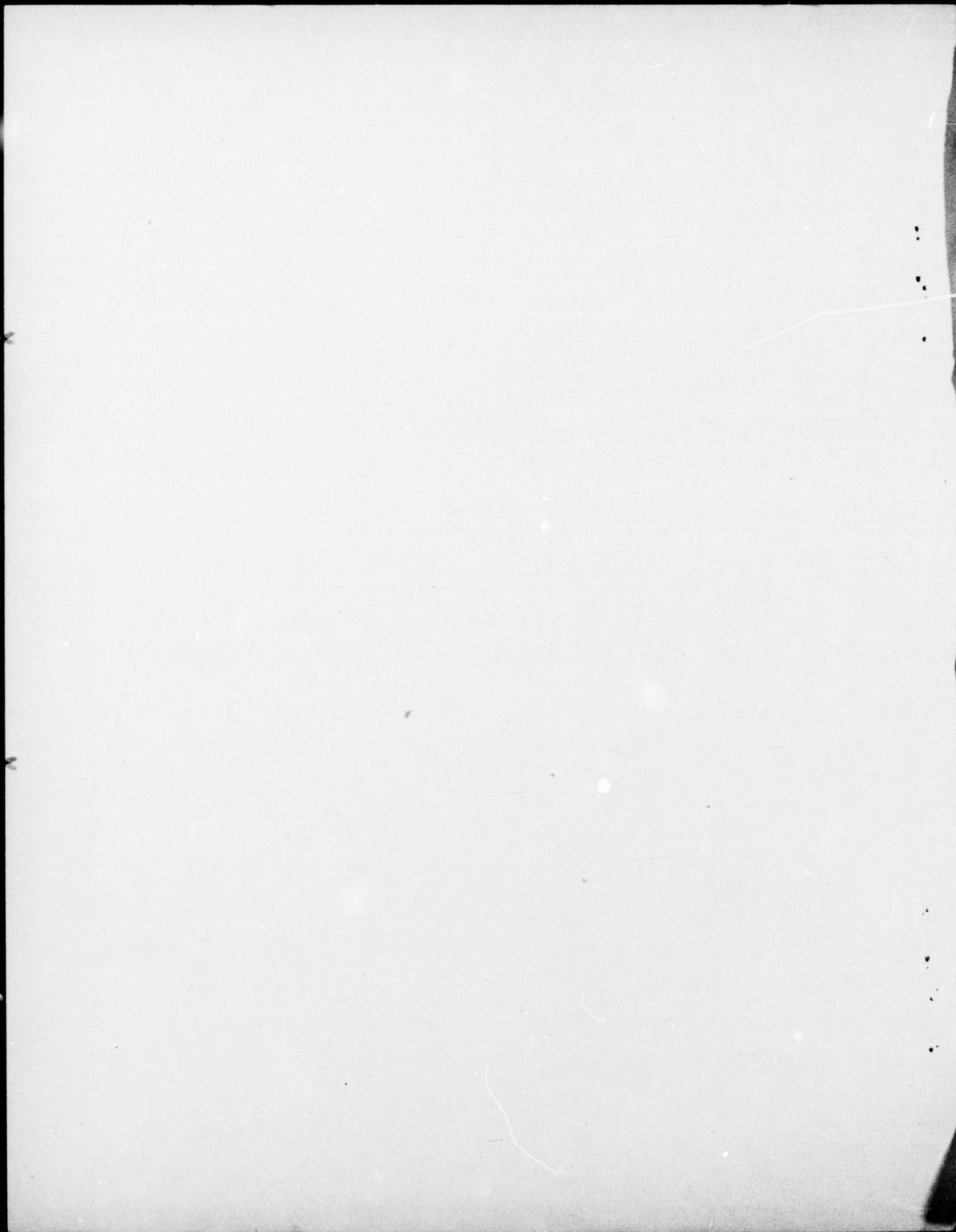


CERTIFICATE OF SERVICE

Feb 13, 1976

I certify that a copy of this brief and appendix has been mailed to the United States Attorney for the Southern District of New York and to appellant.

Jonathan H. Alterman





and to the